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22 September 1955

MEMORANDUM FOR THE RECORD

SUBJECT: Missing Persons Act - Discussion with Department of Defense

REFERENCES: A. Memorandum for the Record, Office of General Counsel, dated 14 September 1955
B. Memorandum for the Record, Office of General Counsel, dated 9 September 1955

1. In securing the concurrence of the Director of Personnel and the Comptroller to Reference A, I discussed this subject in some detail with each, and the Director of Personnel recommended that in our discussion with Defense we consider an additional question raised in the following paragraph.

2. When the Agency head makes a determination of death and it subsequently develops that the employee is actually alive, what is the status of payments made to various beneficiaries as a result of the finding of death? This question has arisen in some cases of interest to this Agency and, although private insurance companies involved are making no attempt to enforce repayment of policy proceeds, the Bureau of Employees' Compensation is requiring repayment of death benefits. There are also certain Government insurance policies which have been paid over.

3. The only provision of the Missing Persons Act which seems relevant to this case is found in section 5 of the Act (50 USC, App. 1005):

> "Payment or settlement of an account made pursuant to a report, determination, or finding of death shall not be recovered or reopened by reason of a subsequent report or determination which fixes a date of death except that an account shall be reopened and settled upon the basis of any date of death so fixed which is later than that used as a basis for prior settlement."

4. On the basis of this provision, it would seem that all agencies of Government are bound not to reopen an account settled as a result of an erroneous determination of death except when death has actually occurred, but subsequent to the date originally determined. If this

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is a correct interpretation of the statute, then, the exception is inserted solely for the protection of the beneficiaries and not for the protection of the Government. It is not clear whether the concept of "settling accounts" refers only to pay and allowance accounts (and perhaps advance accounts for which the individual is responsible at the time he enters a missing status) or whether it is broad enough to cover the paying over of insurance proceeds.

5. Because of a lack of clarity in the present statutory provisions, it would be desirable to insert a provision stating clearly that the proceeds of Government life insurance policies, paid over as a result of an erroneous determination of death, are or are not recoverable from the beneficiaries.

6. The Director of Personnel and the Comptroller would both appreciate greater clarity in this field. As a matter of policy, due to the extreme personnel hardship that may result from requiring recovery of these proceeds, the Agency should probably seek a provision that they are not recoverable.

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Office of General Counsel

Subj: Personnel & CR. Legislation
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